

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Amendment of Parts 73 and 74 of the  
Commission's Rules to Establish Rules for  
Digital Low Power Television, Television  
Translator, and Television Booster Stations  
and to Amend Rules for Digital Class A  
Television Stations

MB Docket No. 03-185

**COMMENTS OF ACCESS SPECTRUM, LLC**

Access Spectrum, LLC ("Access Spectrum") hereby submits these comments in response to the FCC's Notice of Proposed Rule Making concerning the authorization and deployment of digital television translators, boosters and low power television (LPTV) stations.<sup>1</sup> As further detailed below, Access Spectrum urges the FCC to ensure that the deployment of these secondary broadcast facilities do not in any way impede the ability of new primary users in the 700 MHz bands to utilize that spectrum throughout the digital television transition. This is best accomplished by prohibiting new broadcast uses of the 700 MHz bands.

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<sup>1</sup> Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, WT Docket No. 03-185, 18 FCC Rcd 18365 (2003) ("Notice").

## **I. Background.**

Access Spectrum is an FCC-authorized band manager currently operating in both the 220-222 MHz band and the 746-806 MHz (“upper 700 MHz”) band. As a participant in Auction 33 and Auction 38, Access Spectrum has made a substantial investment to the United States Treasury to purchase twenty-one 700 MHz band manager licenses. With an operational footprint covering approximately 60 percent of the contiguous United States, Access Spectrum is now actively marketing its services and has engaged in a number of spectrum use agreements with unaffiliated entities to operate 700 MHz wireless communications systems in accordance with the 700 MHz Guard Band Manager Service rules detailed in Part 27 of the FCC’s Rules.<sup>2</sup>

Through the *Notice*, the FCC seeks comment on whether it should expand existing broadcast use of the upper 700 MHz band and the lower 700 MHz band (698-746 MHz) by allowing digital translators, boosters and LPTV stations to operate on channels 52-69 on a secondary basis.<sup>3</sup> The *Notice* also seeks comment on whether it would be necessary to adopt interference protection standards for the deployment of such broadcast facilities on channels used by the primary use wireless services in the 700 MHz bands.<sup>4</sup>

## **II. The FCC Should Prohibit New Broadcast Uses of the 700 MHz Bands.**

Access Spectrum believes that the FCC should not intermingle new secondary broadcast uses with primary fixed and mobile services operating in the 700 MHz bands. To that end, Access Spectrum urges the FCC to adopt its tentative proposal and not permit digital broadcast translators, boosters and LPTV stations to deploy on channels in the upper 700 MHz channels.

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<sup>2</sup> See 47 C.F.R. § 27.601 *et. seq.*

<sup>3</sup> See *Notice* at ¶¶ 26-30.

<sup>4</sup> *Id.* at ¶¶ 58-59.

Furthermore, Access Spectrum urges the FCC to reconsider its tentative proposal to allow such broadcast use of the lower 700 MHz band.

Access Spectrum and other 700 MHz band managers spent more than \$541 million for the “white space” on UHF-TV channels 60, 62, 65 and 67 for the rights to offer services where full-power broadcast facilities do not exist. In addition, the participants in the lower 700 MHz auctions (Auctions 44 and 49) have spent more than \$145 million for licenses covering channels 52, 55 and 59. Fundamentally, Access Spectrum believes that it is poor spectrum management for the FCC to consider modifying a band’s operational environment *after* it collects nearly \$700 million in auction revenues for that spectrum. This is precisely what the Commission’s staff warned against in its Spectrum Policy Task Force Report when it recommended that “all spectrum users require clear rules governing their interactions with the Commission and other spectrum users . . . ensuring that all rights are clearly delineated is important to avoiding disputes, and provides a clear common framework from which spectrum users can negotiate alternative arrangements.”<sup>5</sup> If adopted, the FCC’s proposals will directly affect Access Spectrum’s business plan for the 700 MHz band manager spectrum in a negative manner.

In participating in Auctions 33 and 38, Access Spectrum focused primarily on acquiring service areas that were devoid of incumbent full-power broadcast facilities on the co-channel and adjacent channel frequencies to the maximum extent possible. This plan would allow Access Spectrum to immediately begin offering services during the DTV transition. If the Commission allows digital translators, boosters and LPTV stations to operate on the same channels licensed to Access Spectrum, there is a high probability that the broadcast facilities will seek out the very same white space that Access Spectrum coveted in Auctions 33 and 38. Thus, if adopted, the

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<sup>5</sup> Spectrum Policy Task Force Report, ET Docket No. 02-135, November 2002, at 17.

FCC's proposals will impose a significant cost on Access Spectrum to monitor, coordinate and protect its spectrum use rights. This is a cost that the FCC should have detailed prior to our participation in the auctions.

Furthermore, Access Spectrum is deeply concerned about the practicality of exerting its primary spectrum rights over broadcasters deploying secondary digital translators, boosters and LPTV facilities. As a band manager, Access Spectrum is not an operator deploying a ubiquitous network across its authorized service area. Rather, the use of our authorized spectrum is fully dependent upon the service needs of our customers; we cannot predict where future deployments may occur. Spectrum and service area that may be clear today may be the subject of a spectrum use agreement tomorrow. This means that even good faith efforts to coordinate digital broadcast translators, boosters or LPTV stations may be subsequently upset by a request to use that same spectrum by an Access Spectrum customer. Access Spectrum is greatly concerned about its ability to terminate the operations of a secondary digital broadcast translator or LPTV station soon after the broadcaster has spent hundreds of thousands of dollars in construction costs. While the FCC's rules clearly identify this spectrum's priority users, legal and political maneuverings by broadcasters could frustrate the timely clearing of the secondary user and prevent Access Spectrum from implementing the spectrum rights that it acquired at auction.

Access Spectrum notes that it has already encountered some confusion in the market with respect to its primary status over analog broadcast translators, boosters and LPTV stations. While several of the broadcast licensees that we have contacted during our start-up operations have been extremely cooperative and anxious to relocate from the upper 700 MHz band, we have been party to discussions where the broadcast licensee was not fully aware that Access Spectrum could require that it terminate its secondary and interfering operations. Access Spectrum

believes that it will encounter even greater broadcaster reluctance to terminate operations of the more expensive digital facilities that have been only recently deployed and not fully amortized.

### **III. The FCC's Existing Interference Protection Criteria Would Not Be Applicable To The 700 MHz Bands.**

The Commission also asks for comments on whether it should adopt interference protection criteria that would guide the deployment of digital broadcast facilities in the 700 MHz bands used for non-broadcast uses and asks whether the parameters of Section 74.709 are sufficient for this task. Section 74.709 provides both co-channel and adjacent channel protection for land mobile facilities operating in the 470-512 MHz band (UHF-TV channels 14-20) from TV translators. Access Spectrum notes, however, that operations in the 700 MHz band will not mirror land mobile operations in the 470-512 MHz band. First and foremost, Access Spectrum is seeing as much demand from potential customers for point-to-point and point-to-multipoint fixed operations as there is land mobile operations in the 700 MHz band. The contour protections provided under Section 74.709 are not applicable to fixed use.

Second, the service areas for the upper and lower 700 MHz wireless services are not limited to a 50-mile radius surrounding major metropolitan areas as is the case with the 470-512 MHz band. The latter allocation policy greatly simplifies the coordination of broadcast facilities in suburban and rural areas as the broadcaster can be assured that its secondary operations will not be frustrated by the future deployment of a primary land mobile operation. In the 700 MHz bands, however, wireless licensees – including Access Spectrum – are now focusing on deploying in those same suburban and rural areas simply because the incumbent full-power broadcast facilities prevents most urban deployments. As noted above, this increases the likelihood that a broadcaster choosing to deploy a digital translator facility in a rural area will soon be asked to vacate the channel to make way for, as an example, a new 10 channel trunked

system. If there are no other frequencies available to relocate the broadcast facility, Access Spectrum is not convinced that the FCC, potentially influenced by local and Federal politicians, would not at least entertain the thought that continued broadcast service to an underserved community may outweigh the spectrum use rights purchased by Access Spectrum at auction. The resultant delays and controversy may even discourage potential customers away from Access Spectrum.

#### **IV. Conclusion.**

These factors lead Access Spectrum to conclude that it is far better policy for the FCC to prohibit digital translators, boosters and low power television facilities in the 700 MHz bands. The opportunities to utilize this spectrum during the DTV transition are already limited and the FCC should not impose even greater hurdles to its efficient utilization by both commercial operators and public safety users. However, should the FCC believe that the DTV transition would be severely frustrated due to the lack of access to this spectrum by digital translators, it should proceed in ways that do not undermine the competitive bidding process or the rights of auction licensees. To that end, Access Spectrum would be pleased to engage in negotiations for a spectrum use agreement with broadcasters interested in deploying digital translators or LPTV facilities on channels now licensed to Access Spectrum in accordance with the requirements pertaining to 700 MHz band managers now contained in Part 27 of the FCC's Rules. To do less than this for the new 700 MHz licensees could invalidate the results of the 700 MHz auctions.

Respectfully Submitted,

/S/ Mark E. Crosby  
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November 25, 2003